

## HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
103 .....	32:9.	July 9, 1918, ch. 143 (proviso of 13th par. under "National Guard"), 40 Stat. 875.

The word "members" is substituted for the words "officers and enlisted men". The word "Regular" is omitted, since the organization is now prescribed for the Army, and the Regular Army is only a personnel category.

## AMENDMENTS

1988—Pub. L. 100-456 struck out "the Canal Zone," after "Puerto Rico,".

## CROSS REFERENCES

Appointment of National Guard officers as Reserve officers upon Federal recognition, see sections 12211 and 12212 of Title 10, Armed Forces.

Army Staff, see section 3031 et seq. of Title 10.

**§ 104. Units: location; organization; command**

(a) Each State or Territory and Puerto Rico may fix the location of the units and headquarters of its National Guard.

(b) Except as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.

(c) To secure a force the units of which when combined will form complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State and Territory, Puerto Rico, and the District of Columbia. However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.

(d) To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units. However, the commanding officer of a unit organized wholly within a State or Territory, Puerto Rico, or the District of Columbia may not be displaced under this subsection.

(e) To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform the duties of the corresponding position for each fully organized wing of the Air National Guard.

(f) Unless the President consents—

(1) an organization of the National Guard whose members have received compensation

from the United States as members of the National Guard may not be disbanded; and

(2) the actual strength of such an organization in commissioned officers or enlisted members may not be reduced below the minimum strength prescribed by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 598; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, § 1234(b)(1), (2), 102 Stat. 2059.)

## HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
104(a) .....	32:6.	June 3, 1916, ch. 134, §§ 64, 65 (proviso), 68, 39 Stat. 198-200.
104(b) .....	32:5 (1st sentence).	
104(c) .....	32:5 (less 1st sentence).	
104(d) .....	32:8.	June 3, 1916, ch. 134, § 60;
104(e) .....	32:10 (proviso).	June 4, 1920, ch. 227 subch. I, § 36; restated June 15, 1933, ch. 87, § 6, 48 Stat. 156.
104(f) .....	32:16.	

In subsection (a), the words "within their respective borders" are omitted as surplusage.

In subsection (b), the word "Army" is substituted for the words "Regular Army", since the Army is the category for which the organization is prescribed, and the Regular Army is a personnel category for which no organization is prescribed. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

In subsection (c), the words "by branch of the Army or organization of the Air Force" are substituted for the words "as to branch or arm of service". The words "branch, organization, or allotment of a unit" are substituted for the words "allotment, branch, or arm of units or organizations".

In subsections (d) and (e) the word "commissioned" is inserted, since 32:8 and 10 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

In subsection (d), the word "brigades" is omitted as surplusage.

In subsection (e), the word "tactical" is omitted as surplusage.

In subsection (f), the words "have received compensation from the United States as members of the National Guard" are substituted for the words "shall be entitled to and shall have received compensation under the provisions of this title". The words "actual strength \* \* \* in commissioned officers or enlisted members" are substituted for the words "commissioned or enlisted strength".

## AMENDMENTS

1988—Subsec. (a). Pub. L. 100-456, § 1234(b)(2), substituted "Each State or Territory and Puerto Rico" for "Each State and Territory, Puerto Rico, and the Canal Zone".

Subsecs. (c), (d). Pub. L. 100-456, § 1234(b)(1), struck out "the Canal Zone," after "Puerto Rico,".

## STUDY OF STATE AND FEDERAL MISSIONS OF NATIONAL GUARD

Pub. L. 103-160, div. A, title V, § 522, Nov. 30, 1993, 107 Stat. 1655, directed Secretary of Defense to provide for a study of State and Federal missions of National Guard to be carried out by a federally funded research and development center, including consideration of both separate and integrated requirements (including requirements pertaining to personnel, weapons, equipment, and facilities) that derive from those missions, required an interim report not later than May 1, 1994, and a final report not later than Nov. 15, 1994, directed Secretary to submit each report to Congress, not later than 15 days after the date on which it is received by the Secretary, and directed Secretary, together with Secretary of the Army and Secretary of the Air Force, to conduct evaluation of assumptions, analysis, find-

ings, and recommendations of the study and, not later than Feb. 1, 1995, to submit to Congress a report on the evaluation.

#### RETENTION OF ANCIENT PRIVILEGES AND ORGANIZATION

Section 32 of act Aug. 10, 1956, provided that:

“(a) Any corps of artillery, cavalry, or infantry existing in any of the States on the passage of the Act of May 8, 1792, which by the laws, customs, or usages of those States has been in continuous existence since the passage of that Act, shall be allowed to retain its ancient privileges, subject, nevertheless to all duties required by law of militia: *Provided*, That those organizations may be a part of the National Guard and entitled to all the privileges thereof, and shall conform in all respects to the organization, discipline, and training to the National Guard in time of war: *Provided further*, That for purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving.

“(b) The First Corps Cadets, antedating, and continuously existing in the State of Massachusetts since, the Act of May 8, 1792, now designated as the 126th Tank Battalion, 26th Infantry Division, hereby declared to be a corps as defined in subsection (a) of this Act for all purposes thereof and now incorporated in the Organized Militia and a part of the National Guard of Massachusetts, shall be allowed to retain its ancient privileges and organization. The First Corps Cadets is hereby declared to be entitled to a lieutenant colonel in command and a major second in command; and those officers, when federally recognized, are entitled to the pay provided by law for their respective grades: *Provided*, That nothing in this section or other provisions of law shall be considered to be in derogation of any other ancient privileges to which the First Corps Cadets is entitled under the laws, customs, or usages of the State of Massachusetts.”

#### CROSS REFERENCES

Army Staff and Air Staff, see sections 3031 et seq. and 8031 et seq. of Title 10, Armed Forces.

Chief and assistant chief of staff of divisions of Army National Guard in Federal service or of wings of Air National Guard in Federal service, detail, see section 12502 of Title 10.

Limitation on relocation of units, see section 18238 of Title 10.

Policies and regulations for government of reserve components of Army and Air Force, see section 10301 et seq. of Title 10.

### § 105. Inspection

(a) Under regulations prescribed by him, the Secretary of the Army shall have an inspection made by inspectors general, or, if necessary, by any other commissioned officers of the Regular Army detailed for that purpose, to determine whether—

(1) the amount and condition of property held by the Army National Guard are satisfactory;

(2) the Army National Guard is organized as provided in this title;

(3) the members of the Army National Guard meet prescribed physical and other qualifications;

(4) the Army National Guard and its organization are properly uniformed, armed, and equipped and are being trained and instructed for active duty in the field, or for coast defense;

(5) Army National Guard records are being kept in accordance with this title;

(6) the accounts and records of each property and fiscal officer are properly maintained; and

(7) the units of the Army National Guard meet requirements for deployment.

The Secretary of the Air Force has a similar duty with respect to the Air National Guard.

(b) The reports of inspections under subsection (a) are the basis for determining whether the National Guard is entitled to the issue of military property as authorized under this title and to retain that property; and for determining which organizations and persons constitute units and members of the National Guard; and for determining which units of the National Guard meet deployability standards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 598; July 30, 1977, Pub. L. 95-79, title VIII, § 804(a), 91 Stat. 333; Oct. 23, 1992, Pub. L. 102-484, div. A, title XI, § 1122, 106 Stat. 2540.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
105(a) .....	32:15 (1st sentence).	June 3, 1916, ch. 134, § 93,
105(b) .....	32:15 (less 1st sentence).	39 Stat. 206.

In subsection (a), the word “commissioned” is inserted, since 32:15 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

In subsection (a)(2), the words “provided in this title” are substituted for the words “hereinbefore prescribed”.

In subsection (a)(4), the words “the Army National Guard and its organizations” are substituted for the words “the organization and the officers and enlisted men thereof”. The word “uniformed” is omitted as covered by the word “equipped”.

In subsection (b), the words “under subsection (a)” are substituted for the word “such”. The words “units and members” are substituted for the word “parts”. The words “within the meaning of this title” are omitted as surplusage.

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102-484, § 1122(1), substituted “shall” for “may” in introductory provisions and added par. (7).

Subsec. (b). Pub. L. 102-484, § 1122(2), inserted before period at end “; and for determining which units of the National Guard meet deployability standards”.

1977—Subsec. (a). Pub. L. 95-79 substituted “Under regulations prescribed by him, the Secretary of the Army may have an inspection made” for “The Secretary of the Army shall have an inspection made at least once a year” and added cl. (6).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 10542.

### § 106. Annual appropriations

Sums will be appropriated annually, out of any money in the Treasury not otherwise appropriated, for the support of the Army National Guard and the Air National Guard, including the issue of arms, ordnance stores, quartermaster stores, camp equipage, and other military supplies, and for the payment of other expenses authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 599.)